



1 ROBERT J. GIUFFRA, JR. hereby declares under penalty of perjury as follows:

2 1. I am a member of the Bar of the State of New York and of Sullivan & Cromwell  
3 LLP, lead counsel in the above-captioned action for Defendants Volkswagen Group of America, Inc. and  
4 Volkswagen AG (“Defendants”). I have been admitted *pro hac vice* to appear in this action.

5 2. I submit this Declaration on behalf of the Defendants to put before the Court  
6 certain facts of which I have personal knowledge regarding Plaintiffs’ proffered expert, Louis J. Freeh,  
7 and cited in Defendants’ Motion to Disqualify Plaintiffs’ Expert Louis J. Freeh and Exclude His Proposed  
8 Testimony at Trial, filed concurrently herewith.

9 3. On or about January 12, 2016, Manfred Doess, the General Counsel of  
10 Volkswagen AG, and I met with Mr. Freeh at the offices of Sullivan & Cromwell LLP in Washington,  
11 D.C. The purpose of that meeting was to discuss Volkswagen AG’s potential retention of Mr. Freeh as  
12 special counsel for Volkswagen AG in connection with U.S. diesel-related investigations and litigations.  
13 This meeting, which lasted several hours, included extensive discussion about Volkswagen AG’s  
14 contemplated strategy for dealing with the then-pending U.S. Department of Justice (“DOJ”) criminal  
15 investigation, what Mr. Freeh viewed as the strengths and weaknesses of the facts, the then-ongoing  
16 internal investigation by counsel for Volkswagen AG’s Supervisory Board, and the best strategy for  
17 resolving the DOJ investigation and the civil emissions cases. During the course of that meeting, Dr.  
18 Doess and I also shared our views with Mr. Freeh on these same topics.

19 4. At various points throughout January 2016, I had additional conversations with  
20 Mr. Freeh (both by email and by phone) regarding the DOJ’s and the Supervisory Board’s investigations.  
21 During those discussions, I shared my views as to the potential strengths and weaknesses of the facts and  
22 their impact on strategy for approaching the investigations and litigations. I also asked for Mr. Freeh’s  
23 thoughts on the same, which he shared. Mr. Freeh and I also discussed our respective views regarding  
24 employees that he believed counsel should interview, as well as additional preservation measures.

25 5. Throughout January 2016, I also had numerous email and telephone conversations  
26 with Mr. Freeh about the specifics of his potential role as special counsel to Volkswagen AG. The scope  
27 of Mr. Freeh’s retention that was under discussion, including with Volkswagen AG’s General Counsel,  
28 included:

- (a) serving on the U.S. Litigation Steering Committee to coordinate Defendants' responses to their U.S. diesel-related regulatory investigations and litigations (this Committee would have consisted of Dr. Doess, Mr. Freeh and me), including civil litigation brought by consumers who purchased or leased diesel vehicles;
- (b) reviewing the record developed from the investigation by counsel for Volkswagen AG's Supervisory Board;
- (c) advising Volkswagen AG regarding its response to the DOJ's criminal investigation;
- (d) evaluating all relevant Volkswagen AG compliance systems impacted by the diesel matter, recommending changes to those systems and overseeing the implementation of those changes; and
- (d) following Volkswagen AG's resolution of the DOJ investigation, serving as Volkswagen AG's compliance monitor, or if the applicable U.S. and non-U.S. authorities requested the appointment of another monitor, to serve as an interface with the monitor.

6. On or about January 16, 2016, I had a conversation with Mr. Freeh regarding an email discovered during the course of Volkswagen AG's internal investigation, including what I believed was its potential impact on the diesel-related investigations and civil litigation. I shared this document with Mr. Freeh in a January 16, 2016 email that was labeled "privileged and confidential" in order to obtain his legal advice, which Mr. Freeh provided in a follow-up email later that day. The document I sent Mr. Freeh is a version of the same document that is attached as Exhibit 7 to his December 2, 2019 expert report, submitted on behalf of opt-out consumers suing Defendants.

7. Also on January 16, I shared with Mr. Freeh a separate privileged and confidential attaching a memorandum authored by one of the law firms serving as Defendants' outside counsel, again for the purpose of obtaining Mr. Freeh's advice. The following day, Mr. Freeh shared his views on this memorandum and on the potential implications for the investigations and lawsuits related to Defendants' diesel emissions conduct.

